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Douglas Electrical Contracting, Inc. and its alter ego and/or successor Nationwide Electrical Contracting, Inc. and Franklin Douglas Black Jr. and Mary Frances Black and International Brotherhood of Electrical Workers, AFL-CIO, Local Unions 342 and 379. Cases 11-CA-17176 and 11-CA-17471

December 20, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

On February 4, 1998, the National Labor Relations Board issued an unpublished Order, inter alia, directing Douglas Electrical Contracting, Inc., (Respondent Douglas) to make whole the discriminatees, Michael Miller, Charles Booe, Paul Vogler, Mike Hill, Tommy Hill, David London, Robert Durham, James Druhl, Thomas West, Tony Smith, William Owen, Bill Forester, Ray Singleton, Leslie Burgess, James Sneed, Richard Brooks, Roger Bowyer, Bobby Barnett, and Al Craver, for loss of earnings and other benefits resulting from the Respondent's discrimination against them in violation of the National Labor Relations Act. On August 3, 1998, the United States Court of Appeals for the Fourth Circuit entered its unpublished Order enforcing the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on May 31, 2001, the Regional Director for Region 11 issued a compliance specification and notice of hearing alleging that Respondent Nationwide Electrical Contracting, Inc. (Respondent Nationwide) is an alter ego and/or successor to Respondent Douglas and is jointly and severally liable for backpay, interest and other relief as required under the Board's Order as enforced by the court. The compliance specification further alleges that Franklin Douglas Black, Jr. and Mary Frances Black, individually, acted as alter egos of Respondents Nationwide and Douglas and that they are personally liable, jointly and severally, for backpay, interest and other relief as required under the Board's Order as enforced by the court. In addition, the compliance specification notified the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. On June 19, 2001, the Respondents filed an answer generally denying the allegations of the compliance specification.¹

By letters dated June 20, 2001, and July 25, 2001, the Region advised the Respondents that the answer to the

compliance specification did not comply with the requirements of Section 102.56 of the Board's Rules and Regulations. The letter advised the Respondents that unless an appropriate answer was filed by August 3, 2001, summary judgment would be sought. By letter dated August 2, 2001, the Respondents filed an amended answer to the compliance specification, admitting certain allegations and denying certain other allegations.

On August 13, 2001, the General Counsel filed with the Board a Motion for Partial Summary Judgment and memorandum in support, with exhibits attached. On August 15, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response.

Ruling on the Motion for Partial Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56 further states:

(b) *Contents of answer to specification*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evi-

¹ The motion for Partial Summary Judgment treats the answer and amended answer (discussed infra) as having been filed on behalf of all four Respondents.

dence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In the amended answer to the compliance specification, the Respondents admitted the date that Respondent Douglas ceased operations, the incorporation date of Respondent Nationwide, the supervisors and agents of Respondents Douglas and Nationwide, and that Respondent Nationwide was on notice of the liability of Respondent Douglas resulting from the Board's Order, as set forth in paragraphs 1, 3, 4, and 5 of the compliance specification. The Respondents denied the remaining allegations in the compliance specification.

The General Counsel contends that the Respondents' general denials with respect to paragraphs 17 through 62 of the compliance specification, which set forth the formula, calculations, and amounts of gross and net backpay for all the discriminatees, do not comply with the requirements of Section 102.56(b) and (c). Thus, the General Counsel argues, the allegations set forth in the compliance specification at paragraphs 17 through 62 should be deemed admitted as true.²

We agree with the General Counsel that, with respect to Respondent Douglas, the amended answer is not sufficient to raise any litigable issues regarding paragraphs 17 through 62, but only to the extent discussed below.³ Paragraph 17 states that the gross backpay due the discriminatees is the amount of earnings each would have received but for the discrimination against them. Paragraphs 18 through 36 allege that the backpay period for each discriminatee. Paragraphs 37 through 39 set forth the basis for determining the gross backpay for each discriminatee.

A general denial is not sufficient to refute allegations pertaining to the backpay period and the gross backpay calculations. *United States Service Industries*, 325 NLRB 485, 486 (1998). Inasmuch as the data at issue is within the knowledge and control of Respondent Douglas, its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures is contrary to the specificity requirements of Section 102.56(b) and (c). *DeMuth Electric*, 319 NLRB 942 (1995); *Best Roofing Co.*, 304 NLRB 727 (1991). We shall therefore grant partial summary judgment as to the allegations in paragraphs 17 through 39 of the compli-

ance specification as to the gross backpay basis, formula, and calculations for all discriminatees.

Paragraphs 40 through 42 state that calendar quarter net interim earnings is the difference between calendar quarter earnings and calendar quarter interim expenses; that calendar quarter net backpay is the difference between calendar quarter gross backpay and calendar quarter net interim earnings; and that the total net backpay due each discriminatee is the sum of the calendar quarter amounts of net backpay due them. Again, Respondent Douglas provides no methodology in its answer setting forth an alternative formula as the basis for determining the net backpay of each discriminatee. The General Counsel is entitled to partial summary judgment on these paragraphs as well. *Taylor Machine Products*, 335 NLRB No. 56 (2001).

Paragraphs 43 through 61 refer to attached appendixes for the gross backpay, interim earnings and interim expenses of each discriminatee. The amended answer states that the allegations in these paragraphs are false, and notes that the appendixes are not correct due to not showing any earnings for the discriminatees referenced in appendixes F, G, J, L, M, P and Q. This general denial is sufficient to place interim earnings and expenses into issue for all the discriminatees because that information is not generally within the knowledge of a respondent. *DeMuth Electric*, 319 NLRB at 943. Accordingly, we shall order a hearing for determination of the discriminatees' interim earnings and expenses.

The first section of paragraph 62 states that the Respondent's obligation to make whole the discriminatees includes a payment for any excess federal and state income taxes they may incur in the form of an increased tax liability that results from receiving in 1 year a lump sum backpay distribution that represents a backpay award for a multiyear backpay period that would have encompassed several tax years but for the Respondent's unlawful conduct. We find that Respondent Douglas' general denial of the allegations in this section of paragraph 62 constitutes a sufficient answer, and we deny summary judgment on this portion of paragraph 62.

The second portion of paragraph 62 summarizes the facts and calculations set forth in the compliance specification, and we grant summary judgment on this section of paragraph 62, except as detailed above. Thus, we find that the gross backpay amounts are as alleged in the compliance specification, but that the net backpay calculations are subject to the hearing that we shall order regarding the discriminatees' interim earnings and expenses.

ORDER

IT IS ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted with respect to the allegations in the compliance specification's paragraphs 17 through 62, insofar as they relate to the backpay pe-

² The General Counsel does not seek summary judgment with respect to alter ego or successor issues.

³ With respect to the three additional Respondents, we need not decide whether the amended answer is adequate under the Board's rules. Resolution of the derivative liability issue will necessarily resolve that question as well. If there is no merit in the alter ego and successorship allegations of the compliance specification, then these Respondents will not be liable for any backpay. If, on the other hand, the General Counsel establishes that such a relationship exists among the Respondents, then the additional Respondents will be bound by the failure of original Respondent Douglas to provide an adequate answer to the gross backpay computations of the compliance specification. *Baker Electric*, 330 NLRB 521 (2000).

riod and the gross backpay calculations for all the discriminatees.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional for Region 11 for the purpose of issuing a notice of hearing and scheduling the hearing before an administrative law judge, which shall be limited to taking evidence concerning the paragraphs of the compliance specification as to which summary judgment was not granted.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all of the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section

102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. December 20, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD